IN THE HIGH COURT OF JUDICATURE AT BOMBAY
O. O. C. J.

WRIT PETITION NO.1605 OF 2006

Shashikant Gangaram Narkar. ... Petitioner.

Vs.

M/s.Advance Transformers & Equipments Pvt.Ltd. & Anr. ...Respondents.

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Mr. A. M. Nathani for the Petitioner.
Mr. R. S. Pai with Mr. T. R. Yadav & Ms.Savita Mishra for Respondent No.1.

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CORAM : DR.D.Y.CHANDRACHUD, J.

August 8, 2006.

P.C.

Rule, by consent of Counsel returnable forthwith. Counsel appearing on behalf of the First Respondent waives service. By consent of Counsel and at their request taken up for hearing and final disposal.

2. A Reference to adjudication was made before the Labour Court under Section 10 of the Industrial Disputes Act, 1947. The Reference was in respect of three workmen, D.S. Jadhav, the Petitioner and another workman by the name of M.D. Vellanju.

The Labour Court by its award dated 3rd August 2005 has come to the conclusion that the workmen are not entitled to any relief. The award has been challenged in these proceedings by one of these three workmen.

3. The Petitioner was in the service of the First Respondent since 18th January 1971. According to the Petitioner he presented himself for duty on 3rd October 1992 but was not allowed to report for work. According to the management, the Petitioner tendered his resignation on 3rd October 1992. On the other hand, according to the Petitioner he was unlawfully terminated. On behalf of the management evidence was adduced of its Manager – Personnel. In the course of his cross-examination, the witness admitted that the date of resignation was not seen on the alleged letter and that in the Written Statement it had not been stated that the resignation letter was tendered or signed in the presence of the witness. The witness admitted that the management's letter of acceptance dated 13th October 2005 did not bear the signature of the workman. Though the letter was alleged to have been sent Under Certificate of Posting, the witness admitted that the Postal Certificate was not produced

before the Labour Court. The witness was unable to state whether the legal dues of the Petitioner had been remitted by the management by Money Order or by cheque.

4. The Petitioner himself stepped into the witness box and denied that he had resigned. The Petitioner stated that the letter of resignation Exhibit C-2/4 did not bear his signature and that the hand writing on the letter of resignation was not his.

5. Now, it is common ground that the other two workmen in respect of whom a reference to adjudication was made, resigned on 2nd March 1995 and 25th February 1995 and received their dues in full and final settlement of their claim. This was after the filing of the statement of claim in the Reference on 29th December 1994. In so far as the Petitioner is concerned, it is an admitted fact that he was not paid his legal dues though it must be noted that it is the contention of the management that he had refused to accept them. The Labour Court proceeded to dismiss the reference merely by observing that the letter of resignation contains the signature of the Petitioner. The contention of the Petitioner was that the letter of resignation was not in his hand writing and that the signature

thereon was not his signature. There is merit in the submission that was urged on behalf of the Petitioner that the Labour Court has failed to consider the totality of the evidence on the record, particularly the evidence of the management's witness which inter alia contains an admission to the effect that the date on the letter of resignation was blank; that the acceptance letter did not bear the signature of the workman in token of receipt and though the acceptance was alleged to have been sent under Certificate of Posting, the postal certificate was not produced by the management. These are material aspects of the evidence which have manifestly been overlooked by the Labour Court. The question as to whether the Petitioner had in fact, resigned was required to be assessed by testing the rival cases of the workman and the management. This has not been done. In these circumstances, I am of the view that it would be necessary to direct the Labour Court to carry out a fresh evaluation of the merits of the reference on the basis of the totality of the evidence on the record. In order to facilitate this process, the impugned award dated 3rd August 2005 is quashed and set aside and Reference (IDA) 340 of 1994 is restored to the file of the Labour Court. It would be open to the parties or any of them to make an application before the Labour

Court for having the alleged letter of resignation evaluated by a hand writing expert and in the event that such an application is made, the Labour Court shall consider it and pass orders thereon. Parties shall appear before the Labour Court for receiving directions on 28th August 2006. The Labour Court shall endeavour to dispose of the reference upon remand by the end of January 2007. The Petition is accordingly disposed of. R.& P. to be sent down forthwith.

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